

REMARKS

The Applicant and Applicant's attorney wish to thank the Examiner for the time spent reviewing the application and preparing the Office Action. The Office Action, mailed November 25, 2008, considered and rejected claims 1-3, 5, 8, 18, 20-24, 26 and 28 in light of Leon (U.S. Patent No. 5,403,252, Bisberg (U.S. Patent No. 3,903,613), Dyer (U.S. Patent No. 4,828,257), and Bond (U.S. Patent No. 4,889,108).¹ By this paper, claims 1 and 18 have been amended. Accordingly, following this paper, claims 1-3, 5, 8, 18, 20-24, 26, and 28 are pending, of which claims 1 and 18 are the only independent claims at issue.

Rejections Under 35 U.S.C. § 103

In the Office Action, claims 1, 3, 5, 8, 18, 20-24, 26, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Leon and Bisberg in view of Dyer. Applicant submits that claims 1, 3, 5, 8, 18, 20-24, 26, and 28 are not obvious in light of the cited references.

Leon discloses a climbing exercise apparatus for simulating hill climbing. The device has a frame on which two pedals are pivotally mounted to provide a user with a vertically reciprocating exercise movement. A dynamic break applies a variable level of resistance against the user's movement. The resistance varies over time in accordance with a control signal generated by a computer. The value of the control signal is independent of the rate at which the user steps. The device also includes a display that successively displays images of hills which are associated with one of the series of control signal values.

Bisberg discloses a bicycle training device that simulates road conditions while the cycle and cyclist are in a static position. The device includes a multi-gear bicycle mounted on a riser tripod, a rear pulley assembly upon which the rear wheel of the bicycle is disposed, and an audio information system which comprises a tape playback unit. The tape playback unit utilizes a tape having two tracks. One track supplies a normal audio signal to the operator of the bicycle to advise the operator that an incline lies ahead on the roadway. The other track supplies varying frequencies to a dynamometer, which applies resistance to movement of bicycle wheel through the rear pulley assembly.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

Dyer discloses a system and method for providing an exercise program at a desired pace throughout each repetition and which applies resistance against a user's efforts based upon user performance history and user demographics. A central controller stores user demographics and performance information, and provides this information as well as program criteria and evaluations to any of a plurality of exercise stations. The exercise stations each include a magnetic brake for producing the desired resistance levels. A central processor unit (CPU) controls the exercise program at each station. The initial brake resistance is established based upon user demographic information and initial user performance of an exercise. The brake resistance is represented by lights in an LED stack simulating weights which move up and down along a run in conformity with position of a movement arm which the user moves. A pacer light moving adjacent the LED weight stack guides the user at a desired pace throughout each repetition. User performance including rate and limb extension is monitored and resistance is changed during the exercise period as performance corresponds to selected criteria. The user's performance is evaluated based on performance history and demographically-based criteria to provide coaching comments to the user and to propose changes to the exercise program. Selected educational and instructional material relevant to the particular user may also be provided. In addition, by monitoring user parameters such as weight and percent body fat, and in view of user demographic and performance information, diet control information may also be provided.

While different in scope and focus, Applicant's claims 1 and 18 are directed to two exemplary embodiments wherein timed changes of a level of effort required in an exercise session are automatically modified based upon a user's performance. For example, amended claim 1 recites, among other things, an exercise apparatus "providing a scripted virtual personal training experience for a user of said exercise apparatus, said scripted virtual personal training experience comprising timed changes in said level of effort, wherein said scripted virtual personal training experience is modifiable based upon a performance of the user such that said timed changes in said level of effort are automatically adjusted during said scripted virtual personal training experience based upon the performance of the user during the scripted virtual personal training experience."²

² Independent claim 18 recites similar scripted training session elements that include timed changes in the level of effort required of the user and the scripted exercise session automatically modifies the timed changes in the level of effort based upon a performance of the user while the user performs the scripted exercise session. Accordingly, the discussion herein, while directly referencing the elements of claim 1, are also equally applicable to the independent

The Office Action asserts that Leon discloses an exercise apparatus providing a scripted virtual personal training experience for a user of the exercise apparatus, the scripted virtual personal training experience comprising timed changes in the level of effort. Additionally, the Office Action asserts that Dyer discloses a scripted virtual personal training experience that is modifiable based upon a performance of a user. Applicant respectfully disagrees and submits that Leon and Dyer neither teach nor suggest a "scripted virtual personal training experience comprising timed changes in said level of effort, wherein said scripted virtual personal training experience is modifiable based upon a performance of the user such that said timed changes in said level of effort are automatically adjusted during said scripted virtual personal training experience based upon the performance of the user during the scripted virtual personal training experience," as recited in amended claim 1.

With regard to the assertion that Dyer discloses a scripted virtual personal training experience that is modifiable based upon a performance of a user, Applicant directs the Examiner's attention to Column 15, lines 7-21 of Dyer, which states:

After recognizing and accepting a previous user, the exercise station CPU 160 examines all pertinent data, such as previous weight lifted, previous number of repetitions, time since the equipment was last used, demographic information of the user and what kind of results the user is looking for (for example, strength, bulk or definition). From this information, the CPU 160 updates the weight value to be used in the current session, and provides output to the user, telling him the weight and number of repetitions that he should do during this exercise period. If the user does not wish to use the suggested settings, he may override the computer by going into a manual mode and entering a desired weight level.

Thus, Dyer merely creates "settings", which specify a simulated weight resistance and a number of repetitions. The "settings" of Dyer cannot be equated to Applicant's claimed "scripts". For example, there is no timed change in the exercise experience with Dyer's settings of weight and number of repetitions. Because there are no timed changes in Dyer's exercise experience, Dyer's exercise device cannot modify "timed changes in said level of effort ... based upon the performance of the user during the scripted virtual personal training experience." Additionally, Dyer's device only adjusts the "weight values to be used in the current session" at the beginning

claim 18 as well as all the dependent claims by virtue of their dependency and incorporation of the elements of the independent claims.

of the current session, and not "during the scripted virtual personal training experience," as recited in the claims.

Attention is now directed to the assertion that Leon discloses an exercise apparatus providing a scripted virtual personal training experience for a user of the exercise apparatus, the scripted virtual personal training experience comprising timed changes in the level of effort. As noted above, Leon's device provides a resistance that "varies over time in accordance with a control signal generated by a computer." (Abstract; *See also* Col. 2, ll 5-7). Leon further discloses that the control signal is "modulated as a function of the displayed hill's difficulty value, the square of the user's weight and the user-entered effort level." (Col. 2, ll. 41-43; *See also* Col. 5, ln. 54-Col. 6, ln. 5). In contrast to the claimed invention, Leon explicitly states that the "value of the control signal[, and thus the resistance,] is independent of the rate at which the user steps." (Abstract; Col. 2, ll. 7-8; *See also* Col. 7, ll. 47-50; Col. 8, ll. 45-48; Col. 9, ll. 14-17; and Col. 10, ll. 44-45). Furthermore, Leon states that the control signal "produces a constant resistance corresponding to the selected hill size or climbing difficulty. It is the constant resistance, independent of the rate of exercise, that very effectively provides the user with the sensation of climbing [a] hill have the selected size." (Col. 5, ln. 68-Col. 6, ln. 5).

Thus, Leon disclosed an exercise device that adjusts the resistance level based on a preprogrammed exercise routine, the user's weight, user inputs, and time. However, Leon does not disclose that the preset times for the exercise routines are adjustable based upon the user's performance. Rather, Leon clearly states that the exercise programs are adjusted independently of the user's performance. In addition, because Leon explicitly teaches that the resistance is varied independently from the rate at which the user steps, Applicant submits that Leon teaches away from combining its resistance varying mechanism that is adjusted independent from the user's performance with Dyer's weight adjustment based in part on a user's previous performances.

It is, therefore, requested that the rejection under 35 U.S.C. § 103(a) to claims 1, 3, 5, 8, 18, 20-24, 26, and 28 be reconsidered and removed. Claims 3, 5, and 8 depend from base claim 1 and claims 20-24, 26, and 28 depend from base claim 18, and thus incorporate the elements recited respectively therein.

In the Office Action, claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Leon, Bisberg, and Dyer in view of Bond. By virtue of its dependence on independent claim 1, claim 2 incorporates the elements recited in claim 1. As discussed above,

Leon, Bisberg, and Dyer fail to disclose or obviate independent claim 1. Furthermore, it has not been established the Bond remedies the deficiencies of Leon, Bisberg, and Dyer. Applicant therefore requests that the rejection under 35 U.S.C. § 103(a) to claim 2 be reconsidered and removed.

CONCLUSION

By this paper pending claims 1 and 18 have been amended. Claims 1-3, 5, 8, 18, 20-24, 26, and 28 are pending and should be in condition for allowance. Reconsideration and allowance of the above-identified claims are now respectfully requested.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of February 2009.

Respectfully submitted,

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